In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-257

JESUS ALVAREZ-FRANCO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Eastern District of California, petitioner was convicted of having knowingly made false statements about his lack of a prior felony conviction (count 1) and his American citizenship (count 2), in violation of 18 U.S.C. 922(a)(6) and 911. He was sentenced to consecutive maximum prison terms on each count (five years and three years); all but six months of the entire sentence was suspended and petitioner was placed on probation on the condition that he be deported. The court of appeals affirmed

the conviction *per curiam*, but it found the sentence improper insofar as it related to deportation, and remanded the case for resentencing (Pet. App.).

As appears from the petition, petitioner's defense at trial was that his false statements were not knowingly made since he did not understand the questions asked by the dealer, when the dealer asked for information necessary to complete the official firearm application forms. In an effort to elicit the extent of petitioner's command and understanding of the English language, the trial judge in this non-jury case engaged in a brief colloquy with petitioner during his testimony (see Pet. 12-13). Partly on the basis of this colloquy, the judge found him guilty, indicating disbelief in petitioner's statements that he did not comprehend English.[1]

Petitioner seems to contend here that the judge's interrogation was unfair. There is, however, no basis for this conclusion. The judge's inquiry was designed to probe the veracity of the defense tendered to him and was well within the proper function of the judge in this court-tried case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

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[1] The court also noted that petitioner had entered the United States in 1940 and had been in this country for thirty years.

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